

28 JAN 1980

MEMORANDUM FOR: Chief, Logistics and Procurement Law Division

STATINTL FROM:

[REDACTED]
Chief, Plans and Programs Staff, OL

SUBJECT: Motor Gasoline Allocation

REFERENCE: Title 10 CFR 211.103 - Allocation Levels

STATINTL

1. The reference defines the allocation levels for end users who are bulk purchasers of gasoline. There are two allocation levels: one-hundred percent of base period use (the period November 1977 through October 1978), and one-hundred percent of base period use as reduced by application of the allocation fraction. The Department of Defense (DOD), agricultural production, and emergency services, fall under the first level, while gasoline made available for industrial, commercial, and government use is reduced by a fraction. The question arises as to which level applies to the Agency.

2. During the spring gasoline shortages, a number of our [REDACTED] operations were being affected because of the shortage of gasoline. On several occasions our Headquarters motor pool gasoline supply was precariously low. We, along with other government agencies experiencing similar problems, approached the Department of Energy and the General Services Administration in an effort to obtain some relief. Among those agencies which participated with us were the Secret Service, Internal Revenue Service, the Federal Bureau of Investigation, the U. S. Postal Services, and the State Department.

3. As a result of these meetings, the allocation system was changed to permit "law enforcement" agencies to fit into the category of emergency service, and therefore, receive gasoline up to the amount of 100 percent of the base period. The term "law enforcement" has been applied rather loosely,

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and while we are currently receiving gasoline under this allocation level, DOE is questioning whether or not we should.

4. We have consistently stated at our meetings, that CIA is not a law enforcement agency, but rather our case is to be made on the basis of national security; therefore, our mission is more akin to that of DOD rather than that of the "law enforcement" agencies. What is needed at this time is acceptance by DOE that this is the case, and the Agency is to continue to receive the 100 percent allocation.

5. Request your office negotiate with the DOE to accept such an interpretation, and that the category "national security" be specifically added to the first allocation level. If DOE is not amenable to aiding us in this endeavor, we suggest you seek the assistance of the Congressional Intelligence Committees.

6. It appears that the energy crisis is going to be with us for a long time. Your immediate attention to this request would be appreciated. Please contact [redacted] extension [redacted] if we can be of further assistance.

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cc: Procurement Division

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(24 Jan 80)

STATINTL

(1/15/74), effective 1/14/74, read as follows until amended in 39 F. R. 5775 (2/15/74), effective 2/4/74:

"§ 211.103 Allocation levels.

"(a) The percentage allocation levels listed in this paragraph are for end-users who are bulk purchasers or wholesale purchasers and are not arranged in sequence of priority. Suppliers shall distribute available supplies of motor gasoline to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels without regard to the order of listing.

"(1) One hundred (100) percent of current requirements for the following uses:

- "(i) Agricultural production;
- "(ii) Emergency services;
- "(iii) Energy production;
- "(iv) Sanitation services;
- "(v) Telecommunication services;
- "(vi) Passenger transportation services.

"(2) One hundred (100) percent of base period volumes use for all other business activities.

"(b) There shall be no allocation levels for end-users not described in subsection (a)."

Subsection (a)(1) was amended to add (a)(1)(vii) in 39 F. R. 5775 (2/15/74), effective 2/4/74:

"(vii) cargo, freight and mail hauling by truck."

Subsection (a)(2) was amended to read as follows in 39 F. R. 6530 (2/20/74), effective 1/14/74:

"(2) One hundred (100) percent of base period use for all other business activities."

Section 211.103, as last amended by 39 F. R. 6530 (2/20/74), effective 1/14/74, was amended in 39 F. R. 15960 (5/6/74), effective 6/1/74.

Section 211.103, 39 F. R. 15960 (5/6/74), effective 6/1/74, was republished without substantive change in

39 F. R. 35472 (10/1/74), effective 9/25/74.

Subsection (a), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79.

(a) *General.* The allocation levels listed in this section only apply to allocations made by supplier to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

Subsection (b), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79:

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

- (1) Agricultural production;
- (2) Department of Defense use as specified in § 211.26.

Subsection (c), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79:

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of the allocation fraction) for the following uses:

- (i) Emergency services;
- (ii) Energy production;
- (iii) Sanitation services;
- (iv) Telecommunications services;
- (v) Passenger transportation services;

(vi) Cargo, freight and mail hauling by truck;

(vii) Aviation ground support vehicles and equipment.

(2) One hundred (100) percent of base period use (as reduced by application of the allocation fraction) for the following uses:

- (i) Industrial use;
- (ii) Commercial use;
- (iii) Governmental use; and
- (iv) Social service agency use.

Subsection (d), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79:

(d) *Purchasers without an allocation level.* There shall be no allocation levels for end-users which are not bulk purchasers or for purchasers which are not otherwise described in paragraphs (b) and (c) of this section. Such end-users shall be supplied in accordance with the provisions of § 211.10(d)(2).

Subsection (e), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 26712 (5/4/79), effective 5/1/79:

(e) *Wholesale purchaser-resellers.* Wholesale purchaser-resellers shall receive allocations on the basis of their base period volumes as determined by § 211.12(c) and adjusted in accordance with § 211.13.

Subsection (e), in 44 F. R. 26712 (5/4/79), effective 5/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 9/1/79:

(e) *Base period volume.* (1) By June 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers, the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

Subsection (e) in 44 F. R. 42549 (7/19/79), effective 9/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 8/1/79:

(e) *Base period volume.* By September 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers, the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

* * *

Subsection (f) originated in 44 F. R. 26712 (5/4/79), effective 5/1/79.

Subsection (f), in 44 F. R. 26712 (5/4/79), effective 5/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 9/1/79:

(f) *Resolution of disputes.* If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the appropriate DOE enforcement division. DOE may require the production of any relevant information necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

Subsection (f) in 44 F. R. 42549 (7/19/79), effective 9/1/79, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79:

(f) *Resolution of disputes.*

If a supplier and purchaser disagrees over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the Office of Petroleum Operations of the appropriate ERA Regional Office. ERA may require the production of any relevant information and issue an order under the procedures of Subpart G of Part 205 or take any other action necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

Subsection (g) originated in 44 F. R. 42545 (7/19/79), effective 8/1/79.